

Exhibit 5

Declaration of Mike Steinberg,
Executive Director of the Roxy Theater

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT, DISTRICT OF
MONTANA
BUTTE DIVISION

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
JAWORT; RACHEL CORCORAN; THE
MONTANA BOOK COMPANY; IMAGINE
BREWING COMPANY, LLC d/b/a
IMAGINE NATION BREWING
COMPANY; BUMBLEBEE AERIAL
FITNESS; MONTANA PRIDE; THE
WESTERN MONTANA COMMUNITY
CENTER; THE GREAT FALLS LGBTQ+
CENTER; THE ROXY THEATER; and
THE MYRNA LOY,

Cause No. CV 23-50-BU-
BMM

**Declaration of Mike
Steinberg, Executive
Director of the Roxy
Theater**

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and the CITY OF
HELENA,

Defendants.

I, Mike Steinberg, declare as follows:

1. I serve as the Executive Director of the Roxy Theater, 718 South Higgins Ave., Missoula, Montana 59801.
2. The Roxy Theater is a nonprofit, community owned theater located in downtown Missoula, Montana.
3. The Roxy Theater receives funding from the Montana Arts Council, a state agency funded by the State of Montana.
4. The Roxy Theater hosts screenings and events seven days a week including new releases nightly and a monthly calendar of independent, foreign and classic films, theater, and community events.
5. The Roxy Theater's mission is to make the world a better place through the power of cinema, education, and community.
6. In 2022, the Roxy Theater was named the Downtown Business of the Year by the Missoula Downtown Business Association for its "extreme creativity in programming through the pandemic as well as its powerful return to in-person movies."
7. In 2022, the Roxy Theater screened 454 unique titles and had 51,911 people attend its films and special events.

8. The Roxy Theater has historically displayed films and events that appear to be “sexually oriented performances” under HB 359.
9. The Roxy Theater continues to display films and events that appear to be “sexually oriented performances” under HB 359.
10. HB 359 appears to prohibit sexually oriented performances at the Roxy Theater because the Roxy Theater is “owned by an entity that receives any form of funding from the state.”
11. The Roxy Theater authorizes on-premises consumption of alcoholic beverages. Specifically, the Roxy Theater sells beer and wine to attendees over the age of 21.
12. Because the Roxy Theater shows “sexually oriented performances” to crowds of larger than two people and authorizes the consumption of alcohol, the Roxy Theater appears to be a “sexually oriented business” under HB 359, despite the plain meaning of those words being unrelated to the purpose of our organization.
13. This upcoming week, the Roxy Theater will show the film *Asteroid City*.
14. *Asteroid City* is a Motion Picture Association rated PG-13 film.

15. *Asteroid City* is about children scientists forced to quarantine during a stargazer convention. In one scene Actress Scarlett Johansson disrobes and steps into a bathtub. This scene appears to meet HB 359's definition of "stripping" and thus "sexually oriented performance."
16. In accordance with Motion Picture Association ratings requirements, the Roxy Theater will show *Asteroid City* to a general audience with no age restrictions.
17. Showing *Asteroid City* to a general audience with no age restrictions appears to violate HB 359, given that the film is a sexually oriented performance and the Roxy Theater receives state funds and/or is a sexually oriented business.
18. This upcoming week, the Roxy Theater will show the film *No Hard Feelings*.
19. *No Hard Feelings* is a Motion Picture Association rated R film.
20. *No Hard Feelings* depicts a coming-of-age comedy featuring Academy Award-winning actress Jennifer Lawrence. In one scene Jennifer Lawrence's "buttocks" and "female breast" are purposefully exposed, including "below a point immediately above

the top of the areola.” This scene appears to meet HB 359’s definition of “sexually oriented performance.”

21. In accordance with Motion Picture Association ratings requirements, the Roxy Theater will show *No Hard Feelings* to attendees 17 years old or older, and/or attendees under 17 accompanied by a parent or guardian of 21 years old or over.
22. Showing *No Hard Feelings* to attendees 17 years old or older, and/or attendees under 17 accompanied by a parent or guardian of 21 years old or over appears to violate HB 359, given that the film is a sexually oriented performance and the Roxy Theater receives state funds and/or is a sexually oriented business.
23. In June of 2023, the Roxy Theater hosted Montana’s first LQBTQ+ film festival, titled “Queerwest Film Fest.”
24. The Roxy Theater’s goal in hosting Queerwest Film Fest is to illuminate the lives, adventures, and pain of LGBTQ+ people living under the majesty, power, and complicated history of the American West.

25. Queerwest was a three-day event featuring live events, a block of shorts from filmmakers around the world, and several feature films, including the made-in-Montana Please Baby Please.
26. As part of Queerwest, the Roxy Theater hosted a drag show which included ten performers, both drag queens and drag kings.
27. The Queerwest drag show was presented to a packed house—selling out a theater of 66 attendees with no age limit.
28. The drag performers demonstrated their art form through both dance and comedy routines, some of which included the stripping of outer layers of clothing and the use of prosthetic breasts. There was no nudity by conventional definition at the event, nor was there exposure of prosthetic nipples.
29. The Roxy Theater intends to host Queerwest again in the future, but HB 359 appears to prohibit many of the films and events that are integral to Queerwest, including the drag show.
30. The Roxy Theater also hosts and employs transgender persons and drag queens and drag kings that perform educational events through the theater.

31. The Roxy Theater hosts a monthly series entitled “Out at the Roxy,” where LGBTQ+ pride is celebrated. This series has led “legislative talk backs” and Q&A sessions with drag queens, and it critically evaluates and appreciates media that portrays LGBTQ+ persons and events.
32. The Roxy Theater intends to continue to host “Out at the Roxy” monthly, and the next series installment is scheduled for July 24th, with a showing of the 1953 film *Glen or Glenda?* which will be open to a general audience.
33. Though it was developed as an exploitation film, Out at the Roxy intends to display Ed Wood’s *Glen or Glenda?* because it is, for its time, an astonishingly sympathetic portrayal of cross-dressing and gender nonconformity. Nominally resembling an educational reel, the film relates the stories of Glen, who struggles to tell his fiancée that he covets her angora sweaters, and a GI who undergoes reassignment surgery, but Wood conveys this narrative in a style bizarre beyond measure.
34. *Glen or Glenda?* includes a scene involving what would appear to be “stripping” under HB 359.

35. The Roxy also hosts a series entitled “Trash Vault,” where the Roxy displays a variety of movies that generally fall within the genre of cult-horror films from 1980’s and 90’s and science fiction-horror.
36. Many of the films portrayed in Trash Vault are rated R, and so are age-restricted by the Roxy, but HB 359 appears to ban those films outright.
37. Trash Vault is hosted by Roxy Employee Charlotte Macorn, who is a transgender woman, and live accompaniments of the films sometimes include drag.
38. The Roxy Theater intends to continue to the Trash Vault series.
39. I have had conversations with Board members and employees about HB 359. Through these conversations, my Board and I have become aware that the threat of criminal and civil liability concerns Board members and employees.
40. I am uncertain whether the State of Montana will enforce HB 359 to criminally charge or penalize the Roxy Theater or its employees.

41. I am uncertain whether the State of Montana will enforce HB 359 to force the withdrawal of the Roxy Theater's operating license.
42. I am uncertain whether the Roxy Theater or its employees are potentially liable to civil suit by any minor that has attended previously or will attend a showing at the Roxy Theater constituting a "sexually oriented performance."
43. The Roxy Theater and its employees are not reassessing programming in light of HB 359, because we are unsure how we can possibly comply. The law seemingly forces us to do everything about our business differently.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of July, 2023.



/s/
Mike Steinberg
for The Roxy Theater